circumstances are such as to justify a winding-up order. The majority of the cases of this sort where a winding-up has been ordered are deadlock cases. Here the trouble is the other way round, the majority bloc can do too much what they like.

The ground on which winding-up is sought is that the minority shareholders are being excluded from the management of the company. This is evidenced by the action of the majority in reducing the number of directors and increasing their qualifications. I do not think that the majority have exceeded their legal rights. Shareholders, when they vote, are entitled to consult their own interests and it would be a strange thing if they could not. They are not trustees of the other shareholders. Matters relating to the election of directors are very much within the rights of shareholders.

I think that the petition should be dismissed with costs.

Petition dismissed.

Solicitors: *Braddell Bros.; R. C. H. Lim & Co.*

OW KONG v. CHEANG KWONG YEN

[A. C. J. (Storr J.) April 2, 1949]

[Ipoh — Civil Appeal No. 12 of 1948]

Landlord and Tenant — Voluntary payment of rent by sub-tenant to superior landlord — Action by immediate landlord to recover possession and arrears of rent.

This was an appeal against the order of the learned District Judge, Perak, who gave possession of the premises in question to the respondent. It appeared that the appellant was a sub-tenant of the respondent and had paid the rent to the landlord after receipt of a letter from the landlord that the respondent was no longer the chief tenant of the premises. The respondent made several demands for payment of the rent and subsequently brought proceedings to recover possession and the arrears of rent.

Held: (1) where the payment to the superior landlord is a voluntary payment and not a compulsory one, then that payment cannot be treated as a set-off or as payment of the rent due; (2) therefore in this case the respondent was entitled to the order for possession and the appeal must be dismissed.

Cases referred to:—

(1) *Jones & Anor. v. Morris* 154 E.R. 1044.

(2) *Graham & Ors. Assignees v. Allsopp* 18 L.J. Ex. 85.

(3) *Sapsford v. Fletcher* 100 E.R. 1147.

(4) *Taylor v. Zamira* 128 E.R. 1138.

(5) *Carter v. Carter* 130 E.R. 1118.

CIVIL APPEAL.

S. M. Sharma for the appellant.

Tan Cheng Hock for the respondent.

Storr J.: — This was an appeal from the Order of the learned District Judge, Perak South, dated 25th August, 1948.

Mr. Sharma appeared for the appellant, and Mr. Tan Cheng Hock for the respondent.

The facts briefly are that the respondent rented the premises, No. 52 Hume Street, from the Chin Sem Lim & Sons Loan and Savings Co. Ltd. of Brewster Road, Ipoh, at a rental of $36 per month. One T. S. Chin acted as agent for the company at the time the tenancy was granted. The appellant became the sub-tenant of respondent occupying the upstairs room and paying a rent of $30 per month as from the 15th December, 1946. The appellant paid the rent regularly up to 20th December, 1947, and has not paid any rent to the respondent since. In October, 1947, the respondent received a letter from Messrs. Cheang Lee & Ong, Solicitors, informing him that the company, his landlord, had transferred the premises to Chin Thin Sin and that as from the 1st October, 1947, he should pay the rent to him. On the 10th November, 1947, Chin Thin Sin, now the superior landlord, gave notice to the appellant that as from the 1st January, 1948, he should pay his rent for the first floor of 52 Hume Street to him, as the respondent was no longer the chief tenant of the premises. It should be noted that there is not in that letter any threat of levying distress or any way interfering with the peaceful occupation of the appellant of the upstairs portion of 52 Hume Street. Without apparently taking any trouble to ascertain from the respondent if, in fact, he had given up the tenancy, the appellant commenced and continued henceforth to pay his rents to the said Chin Thin Sin. The respondent made several demands to the appellant on the premises for the rent, but was told that it was being paid to the said Chin Thin Sin. As he could get no satisfaction from the appellant, he commenced proceedings for arrears of rent and ejectment before the learned District Judge, Perak South, on 7th June, 1948, The learned District Judge originally heard the case on the 9th July, 1948, but on Mr. Sharma applying on behalf of the appellant for a review re-heard it on the 25th August, 1948, when he made an Order as prayed for in the Plaint, i.e.

(a) Possession of the said upstairs portion of the said premises, No. 52 Hume Street, Ipoh;
(b) Judgment in the sum of $120/- being the arrears of rent due for the period 15th January 1948 to 14th May 1948 at the rate of $30/- per month;
(c) Mesne profits from the 15th May 1948 until possession is delivered;
(d) Costs.

The only point in this appeal is whether, in the circumstances of this case, rent paid by a sub-tenant of premises (the appellant) to the superior landlord (Chin Thin Sin) can be set off and treated as rent paid to his immediate landlord (the respondent).

Mr. Sharma submitted that it is always available to a sub-tenant to pay the rent of the premises to the superior landlord, ignoring his immediate landlord. He stated that from the record it was clear that rent was due by the respondent to the superior landlord Chin Thin Sin, and that therefore he had every right to demand the rent from the appellant, the sub-tenant of the respondent. However, the only evidence before the Court as to any rent being due by the respondent was that given by Chin Thin Sin, and of him the learned District Judge in his further Grounds of Judgment said :—

"(f) Having seen Chin Thin Sin in the witness box, I was convinced that he was deliberately lying and that he was doing exactly what the plaintiff complained that he was trying to do, namely to squeeze out his Chief Tenant."

I am not prepared to take a different view to that of the District Judge as to the credibility of that witness. In any event, the suggestion that the respondent had not paid his rent was never made to the appellant by Chin Thin Sin.

In support of his submission, Mr. Sharma cited the case of *Jones & Anor. v. Morris*[1]. However, on looking into the authorities on the subject, I find that *Jones & Anor. v. Morris*[1] is based on the decisions of *Graham & Ors. Assignees v. Allsopp*[2]; *Sapsford v. Fletcher*[3]; *Taylor v. Zamira*[4] and *Carter v. Carter*[5], and the principle to be adopted in such cases is fully set out in the judgment of Rolfe B. in the case of *Graham & Ors., Assignees v. Allsopp*[2] in which, after setting out the facts, *inter alia*, of a similar proposition to that submitted by Mr. Sharma, he says :—

"In support of this proposition the defendant relied on the cases of Sapsford v. Fletcher, Taylor v. Zamira, and Carter v. Carter. These cases establish the proposition that a tenant who has been compelled by a superior landlord or other incumbrancer having a title paramount to that of his immediate landlord, to pay a sum due for ground rent or other like charges, may treat such payment as having been made in satisfaction or part satisfaction of rent due to his immediate landlord, and may plead them, as far as they extend, in bar to any avowry for rent in arrear. The principle on which these cases rest is this: the immediate landlord is bound to protect his tenant from all paramount claims, and when, therefore, the tenant is compelled, in order to protect himself in the enjoyment of land in respect of which his rent is payable, to make payments which ought as between himself and his landlord to have been made by the latter, he is considered as having been authorized by the landlord so to apply his rent due or accruing due. All such payments would certainly give the tenant a right of action against his landlord, as for money paid to his use, and so would, in an action of debt for rent, form a legitimate subject of set-off; and though in replevin a general set-off cannot be pleaded, the Courts have given to the tenant the benefit of a set-off as to payments of this description, by holding them to be, in fact, the payment of the rent itself, or part of it."

From the above, it is quite apparent that if the payment to the superior landlord is a voluntary payment and not a compulsory one, then that payment cannot be treated as a set-off or as payment of the rent due. I agree with Mr. Tan Cheng Hock that in this present case, there is no evidence whatever that the payment by the appellant to Chin Thin Sin, the superior landlord, was in any way a compulsory payment. It must, therefore, be taken as a voluntary payment and such sums as were paid to him for rent of the upstairs premises of No. 52 Hume Street cannot be taken as payment of the rent due for those premises to the immediate landlord, the chief tenant — the respondent.

The appeal is, therefore, dismissed with costs.

Appeal dismissed.

CHONG FAH HIN v. PUBLIC PROSECUTOR

[A. Cr. J. (Russell J.) April 8, 1949]

[K. L. — Criminal Appeal No. 6 of 1949]

Criminal procedure — Application by accused person for adjournment to enable him to brief counsel — No delay — Customs Enactment, 1936, s. 114(i)(e).

This was an appeal against the conviction of the appellant for the offence of being in possession of uncustomed goods. The appellant, a native of Sepang, was arrested in Kuala Lumpur on the February 8, 1949. When charged he claimed trial and the trial was fixed for the February 12, 1949, bail being granted in the sum of $10,000.

On the February 12, 1949 when the case was called, the appellant stated he had been unable to find the sum of $10,000 necessary for bail and therefore had been unable to instruct counsel to defend him. He asked for an adjournment to enable him to brief counsel. This was refused, the trial proceeded and the appellant was convicted.

Held: (1) every accused person has a right, if he so desires to be defended by an Advocate and should be given sufficient time to instruct counsel; (2) in this case the appellant had been guilty of no delay in endeavouring to get bail and to brief counsel and his application for adjournment should have been granted; (3) in the circumstances the conviction must be quashed and a retrial ordered.

MAGISTRATE'S CRIMINAL APPEAL.

N. A. Marjoribanks for the appellant.

M. Suffian (D. P. P.) for the respondent.

Russell J. : — This appellant was arrested at about 12 noon on the 8th of February, 1949, in Kuala